

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

NELSON TUCHMAN,

Respondent.

HUDALJ 93-2029-DB(S)

Decided: January 6, 1994

Carl M. Bornstein, Esq.
For the Respondent

Robin E. McMillan, Esq.
For the Department

Before: William C. Cregar
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose pursuant to 24 C.F.R. § 24.100 *et seq.* On April 27, 1993, the Associate General Deputy Assistant Secretary for Housing-Federal Housing Commissioner, James E. Schoenberger, suspended Nelson Tuchman ("Respondent"). That action is based on Respondent's being charged in a criminal information with violations of Connecticut General Statutes, §§ 53a-122(a)(2), 53a-119(2), 53a-121(b), and 53a-11 (Larceny in the First Degree by Defrauding a Public Community). The suspension prohibits Respondent from participating in primary covered transactions and lower-tier covered transactions as either a participant or principal at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts with HUD. The suspension remains in effect pending resolution of the charges in the information, and any legal, debarment, or Program Fraud Civil Remedies proceedings that may ensue.

Respondent requested a hearing on the suspension on May 18, 1993. Because

the suspension is based solely on an information, the hearing in this matter is limited under 24 C.F.R. §§ 24.313(b)(2)(ii) and 24.413 to submission of documentary evidence and written briefs. An Order dated May 28, 1993, established a schedule for briefs. HUD filed its brief on June 18, 1993. After two extensions, Respondent filed his response on July 29, 1993. On August 10, 1993, HUD filed a Reply to Mr. Tuchman's Response, and on September 17, 1993, filed a copy of the amended Information filed against Respondent in Connecticut.¹

There have been no further filings in this matter and, therefore, it is now ripe for decision.

Findings of Fact

1. Respondent is the owner/operator of Winthrop Health Care Center ("Winthrop"). Secretary's Exhibit to Brief ("S-Ex.") 1. He is also the President and 50% owner of Nelson Associates II, the owner/operator of Windsor Castle Care, Inc. ("Windsor Castle"). S-Ex. 2. Both Winthrop and Windsor Castle are nursing homes.

2. In an Information filed in the Superior Court of Connecticut, Respondent was charged with committing Larceny in the First Degree by Defrauding a Public Community. Specifically, the Information charges that:

Nelson Tuchman by one scheme and course of conduct, did with intent to defraud, file for reimbursement four (4) false cost reports for fiscal year ending 9/30/86; fiscal year ending 9/30/87; fiscal year ending 9/30/88; and fiscal year ending 9/30/89 with the Department of Income Maintenance in conjunction with the State Medicaid program, Title XIX of the Social Security Act, as amended. Said false cost reports overstated expenses of the Winthrop Health Care Center, Inc. of New Haven by falsely representing four (4) leases as arms length leases when in fact they were non-arms length leases in violation of §17-311-52 of the Regulations of the State of Connecticut and whereby he obtained an amount of money in excess of ten thousand dollars (\$10,000.00) in violation of Sections 53a-122(a)(2); 53a-119(2); 53a-121(b); and 53a-11 of the Connecticut General Statutes.

Exhibit Attached to HUD's September 17, 1993 Notice.

¹The Government filed a Request for Leave to File a Reply on August 10, 1993, with the reply attached, and an Informative Motion on September 21, 1993, to include the amended Information. Because Respondent made no objection to either the Request or the Motion, both are GRANTED.

3. An Application for Arrest Warrant attached to the Information charges Respondent with receiving overpayments totalling over \$390,000 by causing Winthrop to enter into leasing agreements with Dumont Leasing, Inc. ("Dumont"), a company formed by the wife of Winthrop's purchasing agent, for equipment for the nursing home. The alleged scheme involves overcharging Winthrop for the cost of the leases, and doing so by failing to disclose the actual relationship between Winthrop and Dumont. S-Ex. 1.

4. Through Nelson Associates II, Respondent submitted an application for a \$9,483,600.00 HUD/FHA mortgage insurance commitment under § 232 of the National Housing Act. The mortgage is for state mandated renovations at the Windsor Castle nursing home. S-Ex. 2.

Discussion and Conclusions of Law

1. Respondent is subject to suspension under 24 C.F.R. Part 24

Respondent, as President and 50% owner of Nelson Associates II, has applied for HUD/FHA mortgage insurance for renovations at Windsor Castle. Therefore, he is both a participant and principal under 24 C.F.R. §§ 24.105(m) and (p), and is subject to suspension.

2. Respondent's Information provides cause for suspension

HUD's regulation at 24 C.F.R. § 24.405(a)(1) provides that suspension may be imposed upon adequate evidence to suspect that an offense listed at 24 C.F.R.

§ 24.305(a) has been committed. Accordingly, a criminal information may constitute sufficient grounds to satisfy 24 C.F.R. § 24.405(a)(1). In this case a detailed affidavit together with the criminal information provide adequate evidence to suspect that Respondent committed Larceny in the First Degree by Defrauding a Public Community.

The offenses listed at 24 C.F.R. § 24.305(a) include the following:

(a)(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a

person.

24 C.F.R. § 24.305(a)(3), (4).

If proved, the offense of Larceny in the First Degree by Defrauding a Public Community indicates a serious lack of business honesty and integrity in the operation of the Winthrop nursing home. Due to the risk of serious potential harm to the public resulting from dealings with a person alleged to have committed grand larceny and to have made false statements, it is not necessary for the Department to await the outcome of the trial before imposing a suspension. Thus, suspensions based solely upon indictments for false claims and fraud have been upheld. *James A. Merritt and Sons v. Marsh*, 791 F.2d 328 (4th Cir. 1986); *In the Matter of Mark Druva*, HUDALJ 91-1716-DB(S) (Dec. 19, 1991).

Respondent argues that because Winthrop and Windsor Castle are two separate entities, and because there are no allegations of improper dealings involving Windsor Castle, irresponsibility cannot be imputed to him *vis à vis* the Windsor Castle operation. I disagree. The question presented is not whether there have been allegations of improper dealings involving Windsor Castle, but whether there is adequate evidence to suspect that Respondent has committed the offense alleged and, accordingly, that he is irresponsible. See *e.g.*, *Merritt* (contractor indicted for filing false claims prohibited from bidding on other contracts). The record is sufficient to support this conclusion. Under these circumstances, the interests of Respondent in pursuing his business activities must yield to the public interest in minimizing the risk of improper expenditure of tax dollars. The suspension will continue only as long as this matter is unresolved. If the Respondent is acquitted, the suspension will be lifted.

Conclusion and Determination

Accordingly, I find and determine that good cause existed on April 27, 1993, to suspend Respondent from further participation in primary covered transactions and lower tier-covered transactions as either a participant or a principal at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts with HUD pending resolution of an information issued against him pending any legal, debarment or Program Fraud Civil Remedies Act proceedings which may ensue.

William C. Cregar
Administrative Law Judge

Dated: January 6, 1994

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DETERMINATION issued by WILLIAM C. CREGAR, Administrative Law Judge, HUDALJ 93-2029-DB(S), were sent to the following parties on this 6th day of January, 1994, in the manner indicated:

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